

ITG News
Keeping First Nations Informed

Publication 4268 Catalogue Number 37829B Eastern Edition July 2006

In This Issue

Message From the Director
Helpful Hints to Avoid Penalties
A Primer on Published Guidance
Your Summer Seasonal Help
Calendar of Tax Events

Message from the Director

As I travel throughout Indian Country and meet with many tribal representatives, I am asked about the current focus on Bank Secrecy Act (BSA) compliance. Many of these concerns are arising from the recent significant fine assessed by the Financial Crimes Enforcement Network (FinCEN) against a tribal casino in Oklahoma along with publicity that was generated by several FBI cases that were connected to that action. In addition, the number of BSA civil examinations has increased as the federal government directs more resources to this area.

While much of the impetus behind the creation of the Bank Secrecy Act was initially focused on combating the ability of organized crime to launder proceeds of illegal activities, the events of September 11, 2001 brought a renewed emphasis on this area by highlighting the need to track the movement of money that might be used to finance terrorism. The post 9/11 world brought an entire series of new laws and regulations designed to tighten the reporting requirements and ensure that all levels of government have access to vital information to combat crime and terrorism. The Patriot Act is the best example of these changes, but the extension of Suspicious Activity Reporting to tribal casinos in March 2003 is another example.

Hopefully, all governments share a common objective of minimizing the opportunity for individuals to launder funds and/or move money that might be used to harm ourselves, our children, and our neighbors. The recent tribal money laundering case in Oklahoma, as well as other reports filed by tribal entities, has shown that organized crime and terrorists have discovered tribal entities and are making attempts to use them for money laundering.

We are grateful that many tribes have instituted strong Bank Secrecy Act

Compliance Programs and are using various tools to alert law enforcement to suspected or potential illegal activities. The filing of FinCEN Forms 102 and 103 by tribal casinos are one example, but we have also had numerous telephone calls from tribal officials to the Money Laundering Hotline. Many Tribes have shown that they want to be full partners in this area. Despite the burden and cost associated with the BSA Compliance Program, there is a keen recognition that we all need to work together to minimize the possibility of money laundering.

However, we are also aware that there are Tribes that lack fully effective BSA programs; ITG stands ready to assist them in making enhancements. ITG Specialists are available to provide training for your staff, copies of pertinent federal regulations, or to assist in reviewing your BSA Compliance Program for your entity. I encourage you to take advantage of our resources and partner with ITG to ensure that Indian Country is a leader in Bank Secrecy Act compliance.

Christie Jacobs

Helpful Hints to Avoid Penalties

One of the areas that surfaced as a concern in Tribal responses to the 2005 Customer Satisfaction Survey is the need for additional assistance in mitigating penalties. While your assigned ITG Specialist is always available to assist you, the best way to avoid penalties is to have an in-depth understanding of what can be done to reduce or eliminate them before they are ever assessed.

In an effort to assist, ITG has created a “Helpful Hints to Avoid Penalties” guide, which is now available on the ITG web site under the Employment Tax page. Hopefully, the suggestions outlined in that guide will reduce penalty assessments, but if a penalty is asserted, the guide also outlines the steps required to address it.

Penalty notices arise from various situations such as failure to deposit payroll taxes timely and late filing or non-filing of various returns. The two most important things to do are:

Determine, through a review of your records, if the notice is correct, AND
Respond to the notice on or before the date required.

Failure to respond timely can lead to the assessment of further penalties and interest. Failure to review records to ensure the correctness of the notice can lead to payment of unnecessary penalties. If the notice is determined to be correct and additional tax, penalties, and interest are due; payment should be

made within the time frame shown in the notice.

Your Indian Tribal Government Specialist and other IRS personnel are ready to assist you in understanding the notices and determining their accuracy. Our Customer Account Services staff can be contacted toll-free at 1-877-829-5500. This call center is open from 8:00 am to 4:30 pm eastern time.

Your ITG Specialist is also available to assist when a timely response to an incorrect notice does not achieve a satisfactory resolution to the situation. The ITG Specialist can review your response and help you file the proper forms to resolve the issue or ensure the case is routed to the proper office for resolution.

We hope that the guide, coupled with Publication 4268, our on-line Employment Tax Guide for Indian Tribal Governments, will help Tribes to meet federal tax administration requirements with a minimum risk of penalties.

Employee Tip Income Program Questions

ITG has a full-time Tip Coordinator to assist you with any questions about tip reporting agreements. If you are interested in securing a Tip Agreement, have questions concerning your existing agreement, or have received a notice about tip reporting responsibilities that is unclear, please contact Julie Reese at (303) 231-5250, ext. 236.

Publication 4268—Employment Tax Guide for Tribes

Our on-line Employment Tax Guide continues to receive a very positive response from tribal payroll and finance employees. You can download this comprehensive guide from a link on our landing page at www.irs.gov/tribes.

A Primer on Published Guidance

For anyone not familiar with the inner workings of tax administration, the array of IRS guidance may seem, well, a little puzzling at first glance. To take a little of the mystery away, here's a brief look at seven of the most common forms of guidance. In its role in administering the tax laws enacted by the Congress, the IRS must take the specifics of these laws and translate them into detailed regulations, rules and procedures. The Office of Chief Counsel fills this crucial role by producing several different kinds of documents and publications that provide guidance to taxpayers, firms and charitable groups. As we begin to upload substantial content to the "Published Guidance" section of the ITG web site, we thought it might be useful to explain the various types of issuances that

can be located there.

Regulation. A regulation is issued by the Internal Revenue Service and Treasury Department to provide guidance for new legislation or to address issues that arise with respect to existing Internal Revenue Code sections. Regulations interpret and give directions on complying with the law. Regulations are published in the Federal Register. Generally, regulations are first published in proposed form in a Notice of Proposed Rulemaking (NPRM). After public input is fully considered through written comments and even a public hearing, a final regulation or a temporary regulation is published as a Treasury Decision (TD), again, in the Federal Register.

Revenue Ruling. A revenue ruling is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties and regulations. It is the conclusion of the IRS on how the law is applied to a specific set of facts. Revenue rulings are published in the Internal Revenue Bulletin for the information of and guidance to taxpayers, IRS personnel and tax professionals. For example, a revenue ruling may hold that taxpayers can deduct certain automobile expenses.

Revenue Procedure. A revenue procedure is an official statement of a procedure that affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code, related statutes, tax treaties and regulations and that should be a matter of public knowledge. It is also published in the Internal Revenue Bulletin. While a revenue ruling generally states an IRS position, a revenue procedure provides return filing or other instructions concerning an IRS position. For example, a revenue procedure might specify how those entitled to deduct certain automobile expenses should compute them by applying a certain mileage rate in lieu of calculating actual operating expenses.

Private Letter Ruling. A private letter ruling, or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. A PLR may not be relied on as precedent by other taxpayers or IRS personnel. PLRs are generally made public after all information has been removed that could identify the taxpayer to whom it was issued.

Technical Advice Memorandum. A technical advice memorandum, or TAM, is guidance furnished by the Office of Chief Counsel upon the request of an IRS director or an area director, appeals, in response to technical or procedural questions that develop during a proceeding. A request for a TAM generally

stems from an examination of a taxpayer's return, a consideration of a taxpayer's claim for a refund or credit, or any other matter involving a specific taxpayer under the jurisdiction of the territory manager or the area director, appeals. Technical Advice Memoranda are issued only on closed transactions and provide the interpretation of proper application of tax laws, tax treaties, regulations, revenue rulings or other precedents. The advice rendered represents a final determination of the position of the IRS, but only with respect to the specific issue in the specific case in which the advice is issued. Technical Advice Memoranda are generally made public after all information has been removed that could identify the taxpayer whose circumstances triggered a specific memorandum.

Notice. A notice is a public pronouncement that may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law. For example, notices can be used to relate what regulations will say in situations where the regulations may not be published in the immediate future.

Announcement. An announcement is a public pronouncement that has only immediate or short-term value. For example, announcements can be used to summarize the law or regulations without making any substantive interpretation; to state what regulations will say when they are certain to be published in the immediate future; or to notify taxpayers of the existence of an approaching deadline.

Your Summer Seasonal Help Independent Contractor or Employee?

Through examinations and compliance checks, the IRS has discovered that during seasonal employment, many Indian tribal government enterprises have incorrectly treated short term employees as independent contractors because of the short duration of the job.

Tribal governments operate many different agencies and organizations, including schools, summer camps and day care centers, which need seasonal employees. Often these organizations hire employees for a very short period of time to fill temporary positions to complete assignments, or projects. On occasion, the organizations may be approached by members of the community looking to earn some money for a short period of time.

Here are four examples of how an organization may have incorrectly treated a person as an independent contractor rather than an employee:

Example 1:

A tribe hired a cook for a two-week summer camp.

The cook used the camp's kitchen to prepare meals.

All food was purchased by the camp.

All pots and pans, dishes, etc. were owned and supplied by the camp.

The cook was paid on an hourly basis.

The cook received instructions by the organization as to what to prepare and how to prepare the food.

Conclusion: Since the cook used camp facilities and equipment, and because all food was supplied by the camp, the cook did not have an investment in a business or a risk of profit or loss. Therefore, the cook is an employee and must have employment taxes withheld and be issued Form W-2 to report wages.

Example 2:

A tribe hired an individual to cater a barbeque.

The individual entered into a contract to supply the food, dishes, silverware, had special equipment such as a large customized grill on a trailer

Conclusion: Under these facts and circumstances, the individual has a relationship as a contractor and assumes the risk of profit or loss. The tribe would issue this individual Form 1099-Misc.

Example 3:

A tribal housing authority hired individuals on a temporary basis to clean and paint vacant apartments.

The individuals reported for work during normal business hours.

The individuals were supervised by a foreman on the housing authority staff.

The individuals were paid by the hour.

All the tools and paint were provided by the housing authority.

When the specific project was completed, the jobs were terminated.

Conclusion: These individuals worked as employees and must have proper employment taxes withheld. The individuals should be issued Form W-2 to report wages paid. These individuals can not be considered independent contractors because they had no risk of profit or loss.

Example 4:

A tribal housing authority contracted with an individual who is registered as a trade or business with the state.

The individual was contracted to build a fence around the housing authority.

The individual provided proof of business insurance.

The individual submitted a bid for the project. The bid specified that the individual would provide materials and tools to complete the job.

When the job was complete, the individual submitted an invoice for payment.

The individual holds himself out to the public as the owner of a fence installation company. He has the name of his business painted on his truck. His business phone number is listed in the business pages and the yellow pages of the local phone book.

Conclusion: The business owner of the fence installation company is an independent contractor. Therefore, payment to him is subject to the Form 1099-misc reporting requirement.

Hospice, Elder Care and Child Care:

An individual works at the tribe's Elder Care facility. If the individual watches the sick, elderly or child at your facility, that person is an employee in general and must be issued Form W-2.

If a care provider watches a child in the care provider's home or facility, the care provider is considered to be an independent contractor. Therefore, if the tribe makes payments to the care provider, then the tribe is required to issue Form 1099-MISC.

If a care provider watches a child at the parent's home, the care provider is an employee of the parent if the parent is paying the care provider directly, (household employee). Form W-2 is issued by the parent(s). See Instructions for Schedule H (Form 1040) Household Employment Taxes. You must file Form W-2 for each household employee to whom you paid \$ 1,400 or more of cash wages in 2005 that are subject to social security and Medicare taxes. Exceptions, (do not count amounts paid to an employee who was under age 18 at any time in 2005 and was a student). (Do not count cash wages paid to your spouse, your child under age 21, or your parent.) You must also file schedule H if you paid \$ 1,000 or more to employees in any calendar quarter. For more information see Publication 926, Household Employer's Tax Guide.

If a tribe hires an independent care provider and contracts with them to provide services at various homes of individuals who are participating in a tribal welfare program, such as one that provides assistance to members in order that they may be able to go to work or school. In these situations, the tribal entity has contracted for the service with the provider and the tribal entity is paying the provider. The tribal entity is not supervising the care provider. The tribe should issue Form 1099-misc. Other facts and circumstances to be considered are whether the care provider is a professional such as a Licensed Practical Nurse or Registered Nurse or Trained Nurse Aid where it is a normal business practice for these individuals to provide services in the home. In these situations they would be independent contractors or employees of an agency providing services. In these cases the tribal entity would issue a Form 1099-MISC to the individual or to the Nursing Agency that is the employer of the nurse or nursing aid.

Remember, the employer is required to issue Form W-2 when payments are made to employees, regardless of how little was paid or how short the duration of the employment.

If you are not sure whether to treat an individual as an employee or an independent contractor, you may request a determination from the IRS as to

whether or not a worker is an employee by filing Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. Alternatively, you may contact your local IRS Indian Tribal Government Specialist or reference Publication 4268, Employment Tax Desk Guide for Indian Tribal Governments. Publication 4268 can be accessed online at www.irs.gov/tribes.

Reporting Abuses/Schemes

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian country. Working together can help ensure the integrity of tribal finances, and eliminate the threats posed by individuals with schemes that appear “too good to be true” and often are. If you are aware of financial impropriety or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860 or via e-mail at tege.itg.schemes@irs.gov.

Self-Assess Your Federal Tax Compliance Risks

Tribal entities can now self-assess their federal tax compliance and work with ITG to address any problems they uncover. Entities electing to participate receive a fillable template from ITG and are provided with the name of a local ITG Specialist who will serve as their resource during the process.

Information on the program, as well as an on-line request form, is available through the “Enhancing Federal Tax Compliance” link on the right-hand of the ITG web site landing page at www.irs.gov/tribes. You can also make an inquiry about the program via e-mail to tege.itg.tefac@irs.gov.

Federal Tax Calendar for Third Quarter 2006

July 2006

Monday, July 3rd - Pull Tabs Annual Form 11-C due for tribe and all agents

Thursday, July 6th - Make a deposit for 6/28-6/30*

Friday, July 7th - Make a deposit for 7/1-7/4*

Monday, July 10th - Employees report June tip income to employers if \$20 or more

Wednesday, July 12th - Make a deposit for 7/5-7/7*

Friday, July 14th - Make a deposit for 7/8-7/11*

Monday, July 17th – Make a deposit for June if under the monthly deposit rule**
Wednesday, July 19th – Make a deposit for 7/12-7/14*
Friday, July 21st – Make a deposit for 7/15-7/18*
Wednesday, July 26th – Make a deposit for 7/19-7/21*
Friday, July 28th – Make a deposit for 7/22-7/25*

August 2006

Wednesday, August 2nd – Make a deposit for 7/26-7/28*
Friday, August 4th – Make a deposit for 7/29-8/1*
Wednesday, August 9th – Make a deposit for 8/2-8/4*
Thursday, August 10th – Employees report July tip income to employers if \$20 or more
Friday, August 11th – Make a deposit for 8/5-8/8*
Tuesday, August 15th – Make a deposit for July if under the monthly deposit rule**
Wednesday, August 16th – Make a deposit for 8/9-8/11*
Friday, August 18th – Make a deposit for 8/12-8/15*
Wednesday, August 23rd – Make a deposit for 8/16-8/18*
Friday, August 25th – Make a deposit for 8/19-8/22*
Wednesday, August 30th – Make a deposit for 8/23-8/25*

September 2006

Friday, September 1st – Make a deposit for 8/26-8/29*
Thursday, September 7th – Make a deposit for 8/30-9/1*
Friday, September 8th – Make a deposit for 9/2-9/5*
Monday, September 11th – Employees report August tip income to employers if \$20 or more
Wednesday, September 13th – Make a deposit for 9/6-9/8*
Friday, September 15th – Make a deposit for 9/9-9/12*
Make a deposit for August if under the monthly deposit rule**
Wednesday, September 20th – Make a deposit for 9/13-9/15*
Friday, September 22nd – Make a deposit for 9/16-9/19*
Wednesday, September 27th – Make a deposit for 9/20-9/22*
Friday, September 29th – Make a deposit for 9/23-9/26*

*= Make a Payroll Deposit if you are under the semiweekly deposit rule.

**= Make a Payroll Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS must be initiated at least one day prior to the due dates listed above in order to be timely.

Return Filing Dates

July 3rd

File Form 11-C (Occupational Tax) to register and pay the annual tax if you are in the business of taking wagers.

July 31st

File Form 941 for the 2nd quarter of 2006. If all deposits paid on time and in full, file by August 10th.

File Form 730 (Monthly Tax Return for Wagers) and pay the tax on applicable wagers accepted during June.

August 31st

File Form 730 and pay the tax on applicable wagers accepted during July.

October 2nd

File Form 730 and pay the tax on applicable wagers accepted during August.

Remember, if your tribe sells pull tabs, you must file Forms 11-C for the tribe and any agent(s) who sells pull tabs for the tribe by July 3rd.

Form 730 must also be filed each month.
